


# California Debt and Investment Advisory Commission



# Mechanics of a Bond Sale

## The Legal Documents

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# Mechanics of a Bond Sale

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- Who is in the “working group”?
- What is everyone supposed to do?
- What happens when?
- What documents are needed?
- What do I need to worry about after closing?

# Mechanics of a Bond Sale

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- Cookie cutters make cookies, not bond deals
- Although there is no “one size fits all” formula, there are patterns and standards
- Develop a realistic timetable
- By staying organized and on schedule, and working hard at timely effective communication, your bond sale is more likely to go smoothly

# Mechanics of a Bond Sale

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- Tales of
  - The City
  - The County
  - The State
  - The Joint Powers Authority
  - The Not-for-Profit Corporation
    - Etc. ....
- From Kickoff to Transcript and happily ever after

# The “Working Group”

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- ISSUER
  - Elected Officials (perhaps not at meetings and receiving all drafts of all documents, but definitely key to fulfilling the Issuer’s legal responsibilities)
  - Counsel
    - City Attorney
    - County Counsel
    - General Counsel
  - Finance
    - Director of Finance
    - Treasurer
    - CAO

# The “Working Group”

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- Project Staff, for example
  - Engineer
  - Real Estate
  - Risk Manager
  - Redevelopment Manager

# The “Working Group”

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The Issuer’s Working Group also includes outside parties such as:

- Financial Advisor
- Bond Counsel
- Disclosure Counsel
- Trustee
- Dissemination Agent
- Appraiser
- Feasibility/Market Absorption Consultant
- Electronic Document Posting Service



# The “Working Group”

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- Other Outside Parties:
  - Underwriter
  - Underwriter’s Counsel
  - Rating Agencies
  - Credit Enhancer (Bank or Bond Insurer)
  - Conduit Borrower
  - Counsels for Various Parties

# Types of Financings

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- Bonds
  - Certificates of Participation
  - Lease Revenue Bonds
  - Notes
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- Public Offering
  - Private Placement

# Transaction Variations

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- Fixed rate/Variable rate
- Auction rate
  - In some ways, a hybrid of fixed and variable
- Insured/Uninsured
- Negotiated Sale/Competitive Sale

# Underwriting Process

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- Negotiated Sale
  - Underwriting firm selected pre-pricing
  - Investment banker participates in structuring
  - Interest rates established through collaboration
  - Interest rates can be adjusted based on actual investor interest and orders
    - Individual maturities may be repriced based on order flow
- Competitive Sale
  - Deal is structured by financial advisor
  - Request for bids advertised
  - Current practice allows reasonable flexibility
  - Bids accepted at a specific date and time
    - Most commonly via electronic platform
  - Bonds sold to bidder with lowest “true interest cost”

# Practical Documents to Prepare Early in the Transaction

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- Distribution List
  - Includes email addresses
- Schedule
  - Includes key dates for documents, approvals, TEFRA hearings, pricing, etc.
  - Requires analysis of notice periods, meetings of elected officials, etc.
- File index
- Closing document index

# TYPICAL MAJOR DOCUMENTS

## - Fixed Rate Transactions

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- Resolution(s) of Issuance
- Indenture or Trust Agreement
- Site Lease
- Lease
- Assignment Agreement
- Tax Certificate
- Official Statement (Preliminary)
- Continuing Disclosure Agreement or Certificate
- Credit Enhancement Documents
- Closing Certificates and Opinions

# ADDITIONAL MAJOR DOCUMENTS

## - Variable Rate Transactions

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- Final Official Statement (sometimes also Preliminary)
- Remarketing Agreement
- Letter of Credit and Reimbursement Agreement/Standby Bond Purchase Agreement
- Credit Agreement
- Sometimes, Swap Documents

# ADDITIONAL MAJOR DOCUMENTS

## - Auction Rate Transactions

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- Auction Agent Agreement
- Broker-Dealer Agreement
- Market Agent Agreement
  
- Auction Procedures
  
- Disclosure Issues



# REFUNDING TRANSACTIONS – Additional Documents

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- Escrow Agreement
- Verification Report
- Defeasance Opinion

# Proofread everything carefully!!

- There is no such thing as “boilerplate”!
- Don't forget the footnotes!



# DISCUSSION OF MAJOR DOCUMENTS

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- RESOLUTION OF ISSUANCE
  - Not to Exceed Amount
  - Authorized Officers
  - Parameters of Sale
    - Interest Rate or Savings
    - Underwriter's Discount
    - Credit Enhancement
  - Compliance with or Waivers of Debt Policies
  - Form of Documents
  - CEQA Compliance

# ADDITIONAL MAJOR DOCUMENTS

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- TRUST AGREEMENT
  - Bonds vs. Certificates of Participation
  - Denominations and Interest Payment Dates
  - Flow of Funds
  - Prepayment or Redemption Terms
    - Optional, Extraordinary, Sinking Fund
  - Additional Certificates/Bonds (Parity Test)

# MAJOR DOCUMENTS, CONTINUED

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- TRUST AGREEMENT
  - Security Covenants
    - Rate or payment covenant
    - Defend against legal actions
    - Compliance with terms of lease
    - Tax covenants
  - Investment of Funds
    - Permitted Investments
    - Who directs

# MAJOR DOCUMENTS, CONTINUED

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- TRUST AGREEMENT
  - Amendment Process
    - With Bondowners' Consent - What percentage?
    - Without Bondowners' Consent
  - Remedies
    - Events of Default
    - Credit Enhancer Control
  - Defeasance
    - Permitted security
    - Defeasance opinion
    - Verification Report

# MAJOR DOCUMENTS, CONTINUED

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- SITE LEASE
  - Lease from public agency to financing entity
  - Sets up leaseback to public agency
- LEASE
  - Lessor
    - Joint Powers Authority
    - Nonprofit public benefit corporation
      - Local
      - Statewide (CIEDB, CSCDA, ABAG)
  - Fair Rental Value
    - Length of term
    - Appraisal

# MAJOR DOCUMENTS, CONTINUED

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- LEASE
  - Asset Transfer vs. Project Based
    - Capitalized Interest
    - Substitution and Release Rights
  - Lease Payments
    - Interest and Principal Components
    - Variable or Fixed
    - Frequency
  - Abatement
    - Beneficial use and occupancy



# MAJOR DOCUMENTS, CONTINUED

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- LEASE
  - Insurance
    - Types (liability, hazard, title, rental interruption, worker's compensation)
    - Limits and Deductibles
    - Self-Insurance
      - No for rental interruption
      - Adequacy of reserves
      - Credit Enhancer approval

# MAJOR DOCUMENTS, CONTINUED

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- LEASE
  - Prepayment
    - Ties to Trust Agreement
  - Remedies
    - Re-enter and re-let
    - Terminate or Continue
    - Damages
  - Tax Covenants
  - Restrictions on Use of Facility

# MAJOR DOCUMENTS, CONTINUED

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- ASSIGNMENT AGREEMENT
  - Assign rights under Lease to Trustee
- TAX CERTIFICATE(S)
  - Specifies factual information on which Bond Counsel relies for tax analysis
  - Contains covenants and obligations of the Issuer regarding, for example, use of proceeds and arbitrage calculations

# MAJOR DOCUMENTS, CONTINUED

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- OFFICIAL STATEMENT
  - Preliminary vs. Final
    - Preliminary used to market certificates/bonds to potential investors
    - Final delivered to actual purchasers
  - Issuer's Document
  - Guidance
    - Federal Securities Law (Rule 15c2-12 and 10b-5)
    - Professional Guidelines (CDIAC, GFOA)

# MAJOR DOCUMENTS, CONTINUED

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- OFFICIAL STATEMENT
  - Describes the debt, issuer and sources of repayment
  - Disclose All Material Facts
    - Rule 10b-5 Anti-fraud provisions
    - Do not omit or misstate a material fact
  - What is Material?

# What is material?

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**A misstatement or omission is material if there is a substantial likelihood that a reasonable (not “any”) investor would (not “could”) consider it important (not “interesting”) in making the decision to purchase or sell the securities.**

# MAJOR DOCUMENTS, CONTINUED

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- OFFICIAL STATEMENT
  - Who Prepares?
    - Disclosure Counsel
    - Underwriter's Counsel
  - Who Reviews?
    - Staff
    - Public Officials
      - Actual Knowledge
      - Reckless Disregard

# MAJOR DOCUMENTS, CONTINUED

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- OFFICIAL STATEMENT
  - Disclaimer Language
    - Issuer (no guarantee of third party data)
    - Underwriter (The Bond Market Association)
      - Review but not guarantee
      - “Due diligence” - reasonable investigation
  - Rule 15c2-12
    - Deemed Final
    - Permitted Omissions of Pricing Data



# MAJOR DOCUMENTS, CONTINUED

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- OFFICIAL STATEMENT
  - Contents
    - Description of Certificates or Bonds
    - Security and Sources of Payment
    - Estimated Sources and Uses
    - The Leased Premises
    - The Project
    - The Issuer
    - Risk Factors
    - Continuing Disclosure

# MAJOR DOCUMENTS, CONTINUED

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- Contents (cont'd)
  - Concluding Information
    - Tax Matters
    - Ratings
    - Litigation
    - Financial Interests
  - Appendices
    - Economic and Statistical Data re Issuer (in forepart sometimes)
    - Audited Financials
    - Form of Bond Counsel Opinion
    - Summary of Legal Documents
    - Credit Enhancement

# PURCHASE DOCUMENTS

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- COMPETITIVE VS. NEGOTIATED
  - Notice of Sale invites public bids, which creates the contract = competitive
    - Check publication requirements
  - Bond Purchase Contract with selected underwriter = negotiated
- BOND PURCHASE CONTRACT
  - Establishes Bond/COP Terms
    - Principal amounts and maturity dates
    - Interest rates
  - Underwriter's Discount

# PURCHASE DOCUMENTS

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- BOND PURCHASE CONTRACT
  - Representations and Warranties
    - Due authorization
    - No conflict
    - No litigation
    - No prior continuing disclosure default
    - Duty to update Official Statement (25 vs. 90 days)
  - Termination Provisions
    - “War out”
    - Other market disruptions

# PURCHASE DOCUMENTS

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- BOND PURCHASE CONTRACT
  - Responsibility for Expenses
  - Closing Documents and Opinions
  - Liquidated Damages
    - Good faith check
  - Indemnification Provisions

# ADDITIONAL MAJOR DOCUMENTS

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- CONTINUING DISCLOSURE AGREEMENT/CERTIFICATE
  - Key Issues
    - Who prepares
    - Deadline for filing reports
    - Provisions for noncompliance
    - Exemptions
  - Obligated Persons
  - NRMSIRS
  - [Disclosureusa.org](http://Disclosureusa.org)

# ADDITIONAL MAJOR DOCUMENTS

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- CONTINUING DISCLOSURE AGREEMENT/CERTIFICATE
  - Contents of Annual Report
    - Audit
    - Updated financial information
  - Dissemination Agent
  - Material Event Disclosure
  - Termination
    - Payoff or defeasance of obligations

# CREDIT ENHANCEMENT DOCUMENTS

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- Bond Insurance
  - Commitment Letter
  - Bond Insurance Policy
  - Standard Terms and Conditions
  - Required Disclosures
  - Closing Opinions and Certifications



# CREDIT ENHANCEMENT DOCUMENTS

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- Letters of Credit
  - Reimbursement Agreement
    - Representations and Warranties
    - Waivers
    - Increased Costs
    - Payment on Bank Bonds
    - Remedies
  - Closing Certificates and Opinions

# BEYOND CLOSING ...

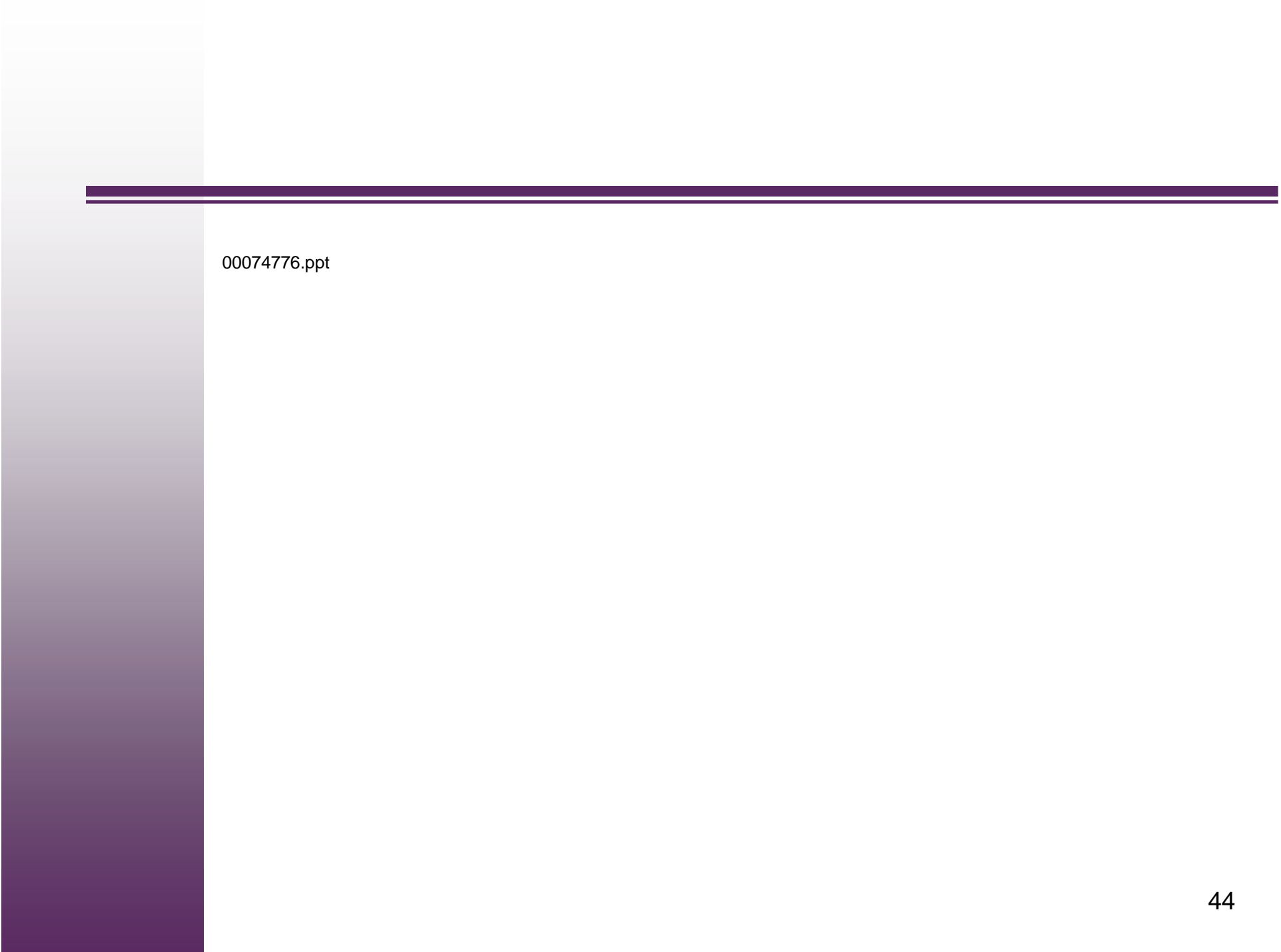
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- The closing transcript does not close out the transaction process
- Continuing disclosure may apply
- Consider when the issuer may be “speaking to the market”
- Implement a program and a process for investor relations including website updates
- Consider other ongoing requirements under the legal documents

# California Debt and Investment Advisory Commission

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- Mechanics of a Bond Sale – The Legal Documents
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